

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA

(1) UNITED STATES for the use and)
benefit of GRANITE EXCAVATION &)
CONSTRUCTION, LLC, an Oklahoma)
limited liability company,)

Plaintiff,)

v.)

Case No. CIV-19-00097-PRW

(1) WALGA ROSS GROUP JV;)
(2) WALGA MTE, LLC;)
(3) THE ROSS GROUP CONSTRUCTION)
COPORATION; and)
(4) FEDERAL INSURANCE COMPANY,)

Defendants.)

AMENDED COMPLAINT

Plaintiff, United States of America, for the use and benefit of Granite Excavation & Construction, LLC, an Oklahoma limited liability company (“Granite”), for its amended complaint against defendants, Walga Ross Group JV (“Walga Ross”), Walga MTE, LLC (“Walga MTE”), The Ross Group Construction Corporation (“TRG”), and Federal Insurance Company (“FIC”), alleges as follows:

1. Granite is an Oklahoma limited liability company, having its principal place of business in Yukon, Oklahoma.
2. Walga Ross is a joint venture having its principal place of business in Wichita, Kansas.
3. Walga MTE is a Kansas limited liability company with an address in Topeka, Kansas.

4. TRG is a corporation organized under the laws of the State of Oklahoma with its principal place of business in Tulsa, Oklahoma.

5. Upon information and belief, TRG and Walga MTE have entered into a joint venture agreement wherein they are responsible for performing work for the United States government on behalf of Walga Ross Group JV.

6. FIC is a surety company licensed to conduct business in Oklahoma.

7. All conditions precedent to the filing of this action have occurred.

8. This is an action pursuant to 40 U.S.C. § 3131, *et seq.* (“The Miller Act”) and pursuant to § 3131(3) must be brought “in the name of the United States for the use of the person bringing the action and in the United States District Court for any district in which the contract was to be performed and executed, regardless of the amount in controversy.”

9. On or about July 13, 2017, the United States Department of the Army, Corps of Engineers (hereinafter called “Government”), entered into a contract with Walga Ross (Contract No. W912BV17C0008) (“Contract”) to perform work required for a project known as “Training Support Facility at Fort Sill, Oklahoma” (the “Project”).

10. FIC, as surety, and Walga Ross, as principal, issued a payment bond pursuant to The Miller Act for the Project.

11. Walga Ross entered into a subcontract with Granite to provide and furnish the labor, materials and equipment necessary to complete a portion of the work for the Contract.

12. Granite satisfactorily performed its work and furnished the required services, materials and supplies as directed by Walga Ross, but Walga Ross failed and refused to pay for the work performed by Granite. There remains due and owing from Walga Ross to Granite the sum of \$206,097.43 for labor and materials supplied to the Project.

13. Walga Ross wrongfully rejected the work performed by Granite and wrongfully terminated the subcontract agreement with Granite. As a result of Walga Ross' wrongful actions, Granite has incurred additional damages in excess of \$75,000.00.

14. Walga MTE and TRG, as members of Walga Ross, are liable to Granite for all amounts due and owing for labor and materials supplied by Granite to the Project.

15. Walga MTE and TRG, as members of Walga Ross, are liable for the damages incurred by Granite as a result of Walga Ross' wrongful actions and wrongful termination of the subcontract agreement.

16. Granite's suit has been timely filed within one year of the last furnishing of materials and supplies or performing of labor under the subcontract.

17. Granite has performed all conditions precedent and statutory prerequisites under the Contract, under the bond and under the applicable law and is entitled to recover the full amount due and owing from Walga Ross and FIC.

WHEREFORE, Granite demands that judgment be entered against defendants, Walga Ross Group JV, Walga MTE, LLC, The Ross Group Construction Corporation and Federal Insurance Company, for damages in an amount in excess of \$75,000.00, together with interest, costs and attorneys' fees. Granite further demands a jury trial.

s/ Evan B. Gatewood

Evan B. Gatewood, OBA #13412

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